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CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM 1941

No. 295

JOSEPH N. WEBER, as President of the American Federation of Musicians, and GEORGE E. BROWNE, as President of International Alliance of Theatrical Stage Employees & Moving Picture Machine Operators of the United States and Canada,

Petitioners,

against

OPERA ON TOUR, INC.,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR REHEARING OF PETITION FOR WRIT OF CERTIORARI

JACK LEWIS KRAUS, 2ND,
Attorney for Respondent.

Of Counsel:
JULIUS WEISS,
JOHN KADEL,
SELIG J. SILVERMAN.

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Respondent's Statement

Since April, 1941, the petitioners have been shuttling between this Court and the Court of Appeals of the State of New York. To date they have been before the latter Court on three separate occasions, and this is their second appearance before this Court. They now seek a rehearing of an earlier petition for certiorari denied by this Court on October 13, 1941.

Before filing the original petition for a writ of certiorari petitioners applied to the New York Court of Appeals for alternate relief either to reargue the case on the merits

or "that the remittitur be amended so as to show that questions under the Federal Constitution were presented and necessarily passed upon by this Court, and to state such questions, to wit: That the injunction in this case violates the Fourteenth Amendment to the Constitution of the United States". This motion was denied in its entirety by the Court of Appeals.

Then followed the application for a writ to this Court. In opposing the petition respondent asserted that (1) no Federal question was involved, and (2) no Federal question had been raised by the petitioners in the Court below. We need not repeat what is already contained in our brief to this Court upon the earlier application. The petition was denied by this Court.

Petitioners then moved a second time in the Court of Appeals for amendment of the remittitur, requesting that the Court state "that in deciding the appeal herein this Court necessarily decided that the injunction issued in this action did not violate the freedom of speech and freedom of assembly guaranteed by the Fourteenth Amendment to the United States Constitution". The contentions in support thereof are the same as are now being advanced to this Court. For a second time the Court of Appeals denied the motion to amend the remittitur.

Despite the fact that the Court of Appeals of the State of New York has twice specifically ruled that it did not decide the case on Federal grounds, petitioners base their latest application to this Court on the ground that it did. Petitioners' labored argument cannot alter the fact that the Court of Appeals did not decide the question on Federal grounds. Respondent adheres to what was said in its earlier brief in opposition to the original petition for certiorari: that the case presents only a question of local New York law, and that petitioners never before raised the Constitutional points now presented to this Court. There has been no change in the situation since petitioners were last before this Court, and petitioners do not contend that this Court has overlooked anything.

Since this Court has once before held that a Federal question was not raised, and the Court of Appeals has twice affirmed this fact, it is respectfully submitted that the petition for rehearing of the application for a writ of certiorari be denied.

Dated: New York, N. Y., December 29, 1941.

Respectfully submitted,

JACK LEWIS KRAUS, 2ND,
Attorney for Respondent.

Of Counsel:
JULIUS WEISS,
JOHN KADEL,
SELIG J. SILVERMAN.